

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2594**

Chapter 100, Laws of 2008

60th Legislature  
2008 Regular Session

INSURANCE COMMISSIONER--EXAMINATION REPORTS

EFFECTIVE DATE: 06/12/08

Passed by the House January 28, 2008  
Yeas 93 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate March 7, 2008  
Yeas 47 Nays 0

BRAD OWEN

**President of the Senate**

Approved March 20, 2008, 4:05 p.m.

CHRISTINE GREGOIRE

**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2594** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

**Chief Clerk**

FILED

March 21, 2008

**Secretary of State  
State of Washington**

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HOUSE BILL 2594

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Passed Legislature - 2008 Regular Session

State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Kirby, Ormsby, Kenney, and Upthegrove; by request of Insurance Commissioner

Prefiled 01/10/08. Read first time 01/14/08. Referred to Committee on Insurance, Financial Services & Consumer Protection.

1            AN ACT Relating to distributing the insurance commissioner's  
2 examination reports; and amending RCW 48.03.040 and 48.37.060.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 48.03.040 and 1993 c 462 s 45 are each amended to read  
5 as follows:

6            (1) No later than sixty days after completion of each examination,  
7 the commissioner shall make a full written report of each examination  
8 made by him or her containing only facts ascertained from the accounts,  
9 records, and documents examined and from the sworn testimony of  
10 individuals, and such conclusions and recommendations as may reasonably  
11 be warranted from such facts.

12            (2) The report shall be certified by the commissioner or by his or  
13 her examiner in charge of the examination, and shall be filed in the  
14 commissioner's office subject to subsection (3) of this section.

15            (3) The commissioner shall furnish a copy of the examination report  
16 to the person examined not less than ten days and, unless the time is  
17 extended by the commissioner, not more than thirty days prior to the  
18 filing of the report for public inspection in the commissioner's  
19 office. If such person so requests in writing within such period, the

1 commissioner shall hold a hearing to consider objections of such person  
2 to the report as proposed, and shall not so file the report until after  
3 such hearing and until after any modifications in the report deemed  
4 necessary by the commissioner have been made.

5 (4) Within thirty days of the end of the period described in  
6 subsection (3) of this section, unless extended by order of the  
7 commissioner, the commissioner shall consider the report, together with  
8 any written submissions or rebuttals and any relevant portions of the  
9 examiner's workpapers and enter an order:

10 (a) Adopting the examination report as filed or with modification  
11 or corrections. If the examination report reveals that the company is  
12 operating in violation of any law, rule, or order of the commissioner,  
13 the commissioner may order the company to take any action the  
14 commissioner considers necessary and appropriate to cure that  
15 violation;

16 (b) Rejecting the examination report with directions to the  
17 examiners to reopen the examination for purposes of obtaining  
18 additional data, documentation, or information, and refileing under this  
19 section; or

20 (c) Calling for an investigatory hearing with no less than twenty  
21 days' notice to the company for purposes of obtaining additional  
22 documentation, data, information, and testimony.

23 (5) All orders entered under subsection (4) of this section must be  
24 accompanied by findings and conclusions resulting from the  
25 commissioner's consideration and review of the examination report,  
26 relevant examiner workpapers, and any written submissions or rebuttals.  
27 Such an order is considered a final administrative decision and may be  
28 appealed under the Administrative Procedure Act, chapter 34.05 RCW, and  
29 must be served upon the company by certified mail or certifiable  
30 electronic means, together with a copy of the adopted examination  
31 report. A copy of the adopted examination report must be sent by  
32 certified mail or certifiable electronic means to each director at the  
33 director's residence address or to a personal e-mail account.

34 (6)(a) Upon the adoption of the examination report under subsection  
35 (4) of this section, the commissioner shall continue to hold the  
36 content of the examination report as private and confidential  
37 information for a period of five days except that the order may be

1 disclosed to the person examined. Thereafter, the commissioner may  
2 open the report for public inspection so long as no court of competent  
3 jurisdiction has stayed its publication.

4 (b) Nothing in this title prohibits the commissioner from  
5 disclosing the content of an examination report, preliminary  
6 examination report or results, or any matter relating thereto, to the  
7 insurance department of any other state or country, or to law  
8 enforcement officials of this or any other state or agency of the  
9 federal government at any time, so long as the agency or office  
10 receiving the report or matters relating thereto agrees in writing to  
11 hold it confidential and in a manner consistent with this chapter.

12 (c) If the commissioner determines that regulatory action is  
13 appropriate as a result of any examination, he or she may initiate any  
14 proceedings or actions as provided by law.

15 (d) Nothing contained in this section requires the commissioner to  
16 disclose any information or records that would indicate or show the  
17 existence or content of any investigation or activity of a criminal  
18 justice agency.

19 **Sec. 2.** RCW 48.37.060 and 2007 c 82 s 8 are each amended to read  
20 as follows:

21 (1) When the commissioner determines that other market conduct  
22 actions identified in RCW 48.37.040(4)(a) have not sufficiently  
23 addressed issues raised concerning company activities in Washington  
24 state, the commissioner has the discretion to conduct market conduct  
25 examinations in accordance with the NAIC market conduct uniform  
26 examination procedures and the NAIC market regulation handbook.

27 (2)(a) In lieu of an examination of an insurer licensed in this  
28 state, the commissioner shall accept an examination report of another  
29 state, unless the commissioner determines that the other state does not  
30 have laws substantially similar to those of this state, or does not  
31 have a market oversight system that is comparable to the market conduct  
32 oversight system set forth in this law.

33 (b) The commissioner's determination under (a) of this subsection  
34 is discretionary with the commissioner and is not subject to appeal.

35 (c) If the insurer to be examined is part of an insurance holding  
36 company system, the commissioner may also seek to simultaneously

1 examine any affiliates of the insurer under common control and  
2 management which are licensed to write the same lines of business in  
3 this state.

4 (3) Before commencement of a market conduct examination, market  
5 conduct oversight personnel shall prepare a work plan consisting of the  
6 following:

- 7 (a) The name and address of the insurer being examined;
- 8 (b) The name and contact information of the examiner-in-charge;
- 9 (c) The name of all market conduct oversight personnel initially  
10 assigned to the market conduct examination;
- 11 (d) The justification for the examination;
- 12 (e) The scope of the examination;
- 13 (f) The date the examination is scheduled to begin;
- 14 (g) Notice of any noninsurance department personnel who will assist  
15 in the examination;
- 16 (h) A time estimate for the examination;
- 17 (i) A budget for the examination if the cost of the examination is  
18 billed to the insurer; and
- 19 (j) An identification of factors that will be included in the  
20 billing if the cost of the examination is billed to the insurer.

21 (4)(a) Within ten days of the receipt of the information contained  
22 in subsection (3) of this section, insurers may request the  
23 commissioner's discretionary review of any alleged conflict of  
24 interest, pursuant to RCW 48.37.090(2), of market conduct oversight  
25 personnel and noninsurance department personnel assigned to a market  
26 conduct examination. The request for review shall specifically  
27 describe the alleged conflict of interest in the proposed assignment of  
28 any person to the examination.

29 (b) Within five business days of receiving a request for  
30 discretionary review of any alleged conflict of interest in the  
31 proposed assignment of any person to a market conduct examination, the  
32 commissioner or designee shall notify the insurer of any action  
33 regarding the assignment of personnel to a market conduct examination  
34 based on the insurer's allegation of conflict of interest.

35 (5) Market conduct examinations shall, to the extent feasible, use  
36 desk examinations and data requests before an on-site examination.

37 (6) Market conduct examinations shall be conducted in accordance

1 with the provisions set forth in the NAIC market regulation handbook  
2 and the NAIC market conduct uniform examinations procedures, subject to  
3 the precedence of the provisions of chapter 82, Laws of 2007.

4 (7) The commissioner shall use the NAIC standard data request.

5 (8) Announcement of the examination shall be sent to the insurer  
6 and posted on the NAIC's examination tracking system as soon as  
7 possible but in no case later than sixty days before the estimated  
8 commencement of the examination, except where the ((exam  
9 [examination])) examination is conducted in response to extraordinary  
10 circumstances as described in RCW 48.37.050(2)(a). The announcement  
11 sent to the insurer shall contain the examination work plan and a  
12 request for the insurer to name its examination coordinator.

13 (9) If an examination is expanded significantly beyond the original  
14 reasons provided to the insurer in the notice of the examination  
15 required by subsection (3) of this section, the commissioner shall  
16 provide written notice to the insurer, explaining the expansion and  
17 reasons for the expansion. The commissioner shall provide a revised  
18 work plan if the expansion results in significant changes to the items  
19 presented in the original work plan required by subsection (3) of this  
20 section.

21 (10) The commissioner shall conduct a preexamination conference  
22 with the insurer examination coordinator and key personnel to clarify  
23 expectations at least thirty days before commencement of the  
24 examination, unless otherwise agreed by the insurer and the  
25 commissioner.

26 (11) Before the conclusion of the field work for market conduct  
27 examination, the examiner-in-charge shall review examination findings  
28 to date with insurer personnel and schedule an exit conference with the  
29 insurer, in accordance with procedures in the NAIC market regulation  
30 handbook.

31 (12)(a) No later than sixty days after completion of each market  
32 conduct examination, the commissioner shall make a full written report  
33 of each market conduct examination containing only facts ascertained  
34 from the accounts, records, and documents examined and from the sworn  
35 testimony of individuals, and such conclusions and recommendations as  
36 may reasonably be warranted from such facts.

37 (b) The report shall be certified by the commissioner or by the

1 examiner-in-charge of the examination, and shall be filed in the  
2 commissioner's office subject to (c) of this subsection.

3 (c) The commissioner shall furnish a copy of the market conduct  
4 examination report to the person examined not less than ten days and,  
5 unless the time is extended by the commissioner, not more than thirty  
6 days prior to the filing of the report for public inspection in the  
7 commissioner's office. If the person so requests in writing within  
8 such period, the commissioner shall hold a hearing to consider  
9 objections of such person to the report as proposed, and shall not so  
10 file the report until after such hearing and until after any  
11 modifications in the report deemed necessary by the commissioner have  
12 been made.

13 (d) Within thirty days of the end of the period described in (c) of  
14 this subsection, unless extended by order of the commissioner, the  
15 commissioner shall consider the report, together with any written  
16 submissions or rebuttals and any relevant portions of the examiner's  
17 work papers and enter an order:

18 (i) Adopting the market conduct examination report as filed or with  
19 modification or corrections. If the market conduct examination report  
20 reveals that the company is operating in violation of any law, rule, or  
21 order of the commissioner, the commissioner may order the company to  
22 take any action the commissioner considers necessary and appropriate to  
23 cure that violation;

24 (ii) Rejecting the market conduct examination report with  
25 directions to the examiners to reopen the examination for purposes of  
26 obtaining additional data, documentation, or information, and refileing  
27 under this subsection; or

28 (iii) Calling for an investigatory hearing with no less than twenty  
29 days' notice to the company for purposes of obtaining additional  
30 documentation, data, information, and testimony.

31 (e) All orders entered under (d) of this subsection must be  
32 accompanied by findings and conclusions resulting from the  
33 commissioner's consideration and review of the market conduct  
34 examination report, relevant examiner work papers, and any written  
35 submissions or rebuttals. The order is considered a final  
36 administrative decision and may be appealed under the administrative  
37 procedure act, chapter 34.05 RCW, and must be served upon the company  
38 by certified mail or certifiable electronic means, together with a copy

1 of the adopted examination report. A copy of the adopted examination  
2 report must be sent by certified mail or certifiable electronic means  
3 to each director at the director's residential address or to a personal  
4 e-mail account.

5 (f)(i) Upon the adoption of the market conduct examination report  
6 under (d) of this subsection, the commissioner shall continue to hold  
7 the content of the examination report as private and confidential  
8 information for a period of five days except that the order may be  
9 disclosed to the person examined. Thereafter, the commissioner may  
10 open the report for public inspection so long as no court of competent  
11 jurisdiction has stayed its publication.

12 (ii) If the commissioner determines that regulatory action is  
13 appropriate as a result of any market conduct examination, he or she  
14 may initiate any proceedings or actions as provided by law.

15 (iii) Nothing contained in this subsection requires the  
16 commissioner to disclose any information or records that would indicate  
17 or show the existence or content of any investigation or activity of a  
18 criminal justice agency.

19 (g) The insurer's response shall be included in the commissioner's  
20 order adopting the final report as an exhibit to the order. The  
21 insurer is not obligated to submit a response.

22 (13) The commissioner may withhold from public inspection any  
23 examination or investigation report for so long as he or she deems it  
24 advisable.

25 (14)(a) Market conduct examinations within this state of any  
26 insurer domiciled or having its home offices in this state, other than  
27 a title insurer, made by the commissioner or the commissioner's  
28 examiners and employees shall, except as to fees, mileage, and expense  
29 incurred as to witnesses, be at the expense of the state.

30 (b) Every other examination, whatsoever, or any part of the market  
31 conduct examination of any person domiciled or having its home offices  
32 in this state requiring travel and services outside this state, shall  
33 be made by the commissioner or by examiners designated by the  
34 commissioner and shall be at the expense of the person examined; but a  
35 domestic insurer shall not be liable for the compensation of examiners  
36 employed by the commissioner for such services outside this state.

37 (c) When making a market conduct examination under this chapter,  
38 the commissioner may contract, in accordance with applicable state



1 contracting procedures, for qualified attorneys, appraisers,  
2 independent certified public accountants, contract actuaries, and other  
3 similar individuals who are independently practicing their professions,  
4 even though those persons may from time to time be similarly employed  
5 or retained by persons subject to examination under this chapter, as  
6 examiners as the commissioner deems necessary for the efficient conduct  
7 of a particular examination. The compensation and per diem allowances  
8 paid to such contract persons shall be reasonable in the market and  
9 time incurred, shall not exceed one hundred twenty-five percent of the  
10 compensation and per diem allowances for examiners set forth in the  
11 guidelines adopted by the national association of insurance  
12 commissioners, unless the commissioner demonstrates that one hundred  
13 twenty-five percent is inadequate under the circumstances of the  
14 examination, and subject to the provisions of (a) of this subsection.

15 (d)(i) The person examined and liable shall reimburse the state  
16 upon presentation of an itemized statement thereof, for the actual  
17 travel expenses of the commissioner's examiners, their reasonable  
18 living expenses allowance, and their per diem compensation, including  
19 salary and the employer's cost of employee benefits, at a reasonable  
20 rate approved by the commissioner, incurred on account of the  
21 examination. Per diem, salary, and expenses for employees examining  
22 insurers domiciled outside the state of Washington shall be established  
23 by the commissioner on the basis of the national association of  
24 insurance commissioner's recommended salary and expense schedule for  
25 zone examiners, or the salary schedule established by the director of  
26 the Washington department of personnel and the expense schedule  
27 established by the office of financial management, whichever is higher.  
28 A domestic title insurer shall pay the examination expense and costs to  
29 the commissioner as itemized and billed by the commissioner.

30 (ii) The commissioner or the commissioner's examiners shall not  
31 receive or accept any additional emolument on account of any  
32 examination.

33 (iii) Market conduct examination fees subject to being reimbursed  
34 by an insurer shall be itemized and bills shall be provided to the  
35 insurer on a monthly basis for review prior to submission for payment,  
36 or as otherwise provided by state law.

37 (e) Nothing contained in this chapter limits the commissioner's  
38 authority to terminate or suspend any examination in order to pursue

1 other legal or regulatory action under the insurance laws of this  
2 state. Findings of fact and conclusions made pursuant to any  
3 examination are prima facie evidence in any legal or regulatory action.

4 (f) The commissioner shall maintain active management and oversight  
5 of market conduct examination costs, including costs associated with  
6 the commissioner's own examiners, and with retaining qualified contract  
7 examiners necessary to perform an examination. Any agreement with a  
8 contract examiner shall:

9 (i) Clearly identify the types of functions to be subject to  
10 outsourcing;

11 (ii) Provide specific timelines for completion of the outsourced  
12 review;

13 (iii) Require disclosure to the insurer of contract examiners'  
14 recommendations;

15 (iv) Establish and use a dispute resolution or arbitration  
16 mechanism to resolve conflicts with insurers regarding examination  
17 fees; and

18 (v) Require disclosure of the terms of the contracts with the  
19 outside consultants that will be used, specifically the fees and/or  
20 hourly rates that can be charged.

21 (g) The commissioner, or the commissioner's designee, shall review  
22 and affirmatively endorse detailed billings from the qualified contract  
23 examiner before the detailed billings are sent to the insurer.

Passed by the House January 28, 2008.

Passed by the Senate March 7, 2008.

Approved by the Governor March 20, 2008.

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